may be noted, however, that there is a slight variation in the facts of the two cases, inasmuch as in the present case alienation is only allowed to be made to a specified class while in the previous case it was allowed to all save certain specified classes. This is sometimes made a basis of distinction. See GRAY, RESTRAINTS ON THE ALIENATION OF PROPERTY, § 41; WILLIAMS ON SETTLEMENTS, 134, 135. While, as a general principle, restraints on the alienation of an estate in fee are looked upon with disfavor, and certainly any attempt at a total restraint is void, cases may be found which uphold certain partial and limited restraints; as, for instance, a restriction against the sale to negroes—*Koehler* v. *Rowland,* 275 Mo. 573; *Queensborough Land Co.* v. *Cazeaux,* 136 La. 724. Some proceed upon the distinction above mentioned, that is, whether the restraint affects alienation only to a certain class, or to all but the specified class or classes; others suggest that the period of time during which the restraint is to be effective should be considered. The cases are in great conflict, and it seems impossible to deduce therefrom any rule which may be said to govern all cases. For a discussion of the subject of segregation ordinances and their validity see 16 MICH. L. REV. 109, though this is on a different phase of the subject.

EASEMENTS—PROFITS A PRENDRE—LICENSES—REVOCABILITY.—Plaintiff corporation was granted (by deed) the right to bottle and sell the surplus waters from the Saratoga springs on specified terms with the right to enter and use the reservation for that purpose. In an action to enjoin the defendant from preventing the plaintiff from entering and enjoying his rights, *held,* that the instrument granted an easement, an incorporeal hereditament, an interest in the land and not a mere revocable license. *Saratoga State Waters Corporation* v. *Pratt,* (N. Y., 1920) 125 N. E. 834.

If the right granted was an easement it was obviously an easement in gross since it was unattached to any tenement. In England and in some of the states of this country the existence of an easement in gross is denied, and such a right is regarded as no more than a mere license. *Ackroyd* v. *Smith,* 10 C. B. 164; *Boatman* v. *Lasley,* 23 Ohio St. 614. Other courts recognize such an easement and hold it to be assignable and inheritable. *Goodrich* v. *Burbank,* 97 Mass. 27; *Poull* v. *Mockley,* 33 Wis. 482; *New York* v. *Law,* 125 N. Y. 380. A profit a prendre is a right to take the soil or the products of the soil; it is assignable and may be held in gross or as appurtenant to another estate. *Grubb* v. *Grubb,* 74 Pa. St. 25; *Welcome* v. *Upton,* 6 M. & W. 536. The right to take the waters of a spring is regarded not as a profit but as an easement. *Race* v. *Ward,* 4 El. & Bl. 702. A very recent case in Vermont holds such right to be a profit. *Clement* v. *Rutland Country Club,* (1920) 108 Atl. 843. A mere license to do something on the land of another is revocable at the will of the licensor, but in some states it becomes irrevocable when executed or when the licensee has incurred expense. *Oster* v. *Broe,* 161 Ind. 113; *Rerick* v. *Kern,* 14 S. & R. (Pa.) 267. There is another class of privileges, not strictly embraced within the term easements, profits or licenses, which are regarded as assignable and irrevocable. These are variously called "a great deal more than a license," *Standard Oil Co.* v.

Buchi, 72 N. J. Eq. 492 (right to lay oil pipes); *cf. Davis* v. *Tway,* 16 Ariz. 566; or "a license coupled with a grant," *Penman* v. *Jones,* 100 Atl. 1043 (right to dig and remove coal); *cf. Caldwell* v. *Fulton,* 31 Pa. 475; or "coupled with an interest," *Ingalls* v. *St. Paul etc. Ry.,* 39 Minn. 479 (to enter and remove chattels). For an exhaustive discussion of the confusion in terms and faulty analysis in easement and license cases see 27 YALE L. JOUR. 66. See also 7 COL. L. REV. 536; 14 MICH. L. REV. 259; 7 MICH. L. REV. 605; 13 MICH. L. REV. 401.

EVIDENCE—INTOXICATING LIQUORS—ADMISSIBILITY OF UNPROVED NOTE.—In a prosecution under the Alabama prohibition law, the state was allowed to show that officers found the following note on top of some cases of beer in the possession of the defendant: "Frank, please put this in the lounge and make Elvira burn the boxes and go to sleep and don't talk. B." The name of the defendent was Ben. *Held,* the note was improperly admitted in evidence, since there was no proof that it was written or authorized by the defendant. *Ex parte Edmunds,* (Ala., 1919) 89 So. 93.

The rule followed in the principal case has the approval of text writers and courts. 3 WIGMORE, EV., § 2130; 1 GREENLEAF, EV. [16th ed.], 680; *Stamper* v. *Griffin,* 20 Ga. 312; *Langford* v. *State,* 9 Tex. App. 283; *State* v. *Grant,* 74 Mo. 33. If there had been proof of the handwriting of the note it would presumably have been admissible. *Burton* v. *State,* 107 Ala. 108. Such evidence would, if proved, be admissible irrespective of the method by which it was obtained. *People* v. *Trine,* 164 Mich. 1. A distinction is made in the principal case and elsewhere between papers and other property seized, (*State* v. *Krinski,* 78 Vt. 162), the theory being that the writing without proof of identity is legally non-existent. *Stamper* v. *Griffin, supra.* Courts do not always observe this distinction. In a recent Alabama case the state was allowed to prove by parol evidence the contents of an unproved writing similar to the one in the principal case. *Johnson* v. *State,* 78 So. 716. It was said in *Sigfried* v. *Levan,* 6 Serg. & R. (Pa.) 308, 312, "* * * if there be any fact or circumstance tending to prove the execution, or from which the execution might be presumed, then like other presumptive evidence, it is open for the decision of the jury." It is submitted that a fair construction of the circumstances would make the note a part of the whole transaction and presumptively part of the instructions given by the defendant to his confederate.

GIFTS—ORDER IN BANK BOOK NOT EVIDENCE OF GIFT OF BANK DEPOSIT—NO DELIVERY SHOWN.—R sold land to H, agreeing to take in part payment thereof a deposit in a bank, and requested the purchaser to make the account payable to himself or M or the survivor of either of them. H executed the order and delivered the book and order to R or to R and M, by placing it on a table in their presence. M was later seen with the book but shortly afterwards it was returned to R in whose possession it remained until his death. In an action by R's executors against the bank and the alleged donee, *held,* no valid gift *inter vivos* to M was created since there was neither a sufficient showing of R's donative intent nor a valid delivery. *Rice et al* v. *The Bennington County Savings Bank et al,* (Vt., 1920) 108 Atl. 708.